(Testimony of Lt.-Col. Pearl Hugh Hand.)

The Court: There are the regulations. There is a question about those. He wants to examine him on them.

Mr. Houck: I see.

The Court: You might withdraw this witness at this time and you will have an opportunity to call him when he gets those regulations.

Mr. Houck: You do not wish to cross-examine this witness until we produce the other records?

Mr. Faulkner: Until you produce the other records.

Mr. Houck: That is all. Step down.

Mr. Pratt: If the Court please, at the outset of this trial Mr. Faulkner asked for the exclusion of witnesses and an exception was made, so far as the Government was concerned, as to two agents of the Federal Bureau of Investigation. We would like that also now to apply to Colonel Hand and also to Captain Evans, who is an Army officer of the Veterinary Corps, and whose assistance we will need in the courtroom from time to time.

Mr. Faulkner: I will object to it, your Honor, unless Counsel indicates that they have no other purpose in this case than to testify as an expert witness, and if they testify to any matter on the facts, I will ask that the rule of the Court be followed as indicated originally. In other words, it would [292] have been to our advantage to have our experts here to sit through this trial and we did not even do that.

Mr. Pratt: I have no objection to their experts.

being here or any of their witnesses, so far as that is concerned.

Mr. Faulkner: If this man is to testify to any fact relating to the merits of the case or any fact having some materiality relating to the acts or conduct of the defendants, we ask that the rule be enforced, because that is the purpose of the rule, that the witness shall not be present while the testimony of another witness is being adduced in order that his own testimony might, if he is so minded, conform his testimony to the testimony heard in the court room.

Mr. Pratt: So far as Colonel Hand is concerned and so far as our present intention goes, he will testify in addition to what he has already said only in connection with the production of the army regulations or whatever they are that he has mentioned.

Now, so far as Captain Evans is concerned—I am mistaken about that: Colonel Hand will testify in connection with definite inspections on certain ships, particularly with reference to the substantive counts of the indictment. Nevertheless, these two men are Government officers. They have assisted in the investigation in connection with this matter. We need their advice from time to time in the courtroom and certainly I know it is within the discretion of the Court. It is [293] certainly to be presumed that these men are honest. They are army officers. And I believe that there is no reason, no sufficient reason for excluding them during the course of the trial. So far as Mr. Faulkner's experts

are concerned, he can have them in the court room if he likes. I have never made any objection to the presence of any of his witnesses, for that matter.

Mr. Faulkner: Your Honor, Colonel Hand was called to the stand and Counsel has said "That is all." Now Counsel indicates he is going to be brought back to the stand to testify to particular transactions. If that is true, we ask that the order remain as indicated. I do not want to get into any discussion of Government witnesses to support my position.

The Court: I want the rule to apply to both sides equally so far as I can. However, is this the army officer in question that you want to remain?

Mr. Pratt: Yes, we want Colonel Hand to remain and we also want Captain Evans, who is one of Colonel Hand's subordinates.

The Court: We will reach Captain Evans when we come to him, when he is called. I shall permit this witness to remain.

Mr. Faulkner: Then, your Honor, I ask that they finish their examination of him.

The Court: But the regulations are not here. You wanted the regulations.

Mr. Faulkner: No, they say they want now to examine him on [294] particular transactions.

Mr. Pratt: Your Honor may recall that on the occasion when the motion was argued a week before the trial I stated to the Court that in order to clarify the evidence and so that it might be readily understood by the Jury in connection with particu-

lar transactions relating to particular shipments as set out in the substantive counts, it is my plan to present all the witnesses with relation to one particular boat, a shippment, and then when another boat came along I would recall some of the same witnesses who would testify specifically about another boat. The statement was then made by Mr. Falkner that he would gladly agree to anything that would clarify the evidence and make it more clearly understood by the Jury. And it is in connection with some of these specific and substantive transactions that Colonel Hand will be called. Also, of course, Captain Evans will be called on a number of occasions separately in connection with these particular deliveries to boats.

Mr. Faulkner: That was the purpose of every objection I made to your Honor yesterday, that the Captain should testify to these particular instances. They had a witness on the stand and they said, "That is all." Now they intend to call him seven more times. I will object to that method of presenting a case. When a witness is called his testimony should be exhausted. I have never heard of a case tried in that fashion.

Mr. Pratt: Counsel, you agreed to it. [295]

Mr. Faulkner: Taking six counts of an indictment and trying them as six separate trials: put a witness on, cross-examine him, let him sit in the courtroom while all the other witnesses testify, then put him back on the stand for five or six different occasions. That is on the counts. Now, if you take

the list of ships, I think he has a list of 30 ships, so we will have these witnesses on thirty times. I never heard of that procedure. I will stick to what I said to Mr. Pratt, that I will facilitate the Government in any way possible to make an accurate record to the Jury, but I certainly will object to a witness going back and forth like an elevator in a building on that witness stand, and I have never seen it done in twenty-five years in this court room.

Mr. Pratt: I have done it, if the Court please.

Mr. Faulkner: You have never done it in this district. Excuse me, I did not mean to say that.

The Court: Let the Court try to determine this now. What is before the Court?

Mr. Faulkner: We object to Colonel Hand sitting in the courtroom until his examination is completed.

The Court: Submitted?

Mr. Faulkner: We would ask that the Government complete his examination now.

Mr. Pratt: I will say this: under the plan which I thought I had outlined to the Court a week ago last Monday, when we [296] come to taking up the particular occurrence or transaction relating to a boat, if Colonel Hand or Captain Evans is to testify in regard to that particular transaction we will be glad to order him out of the courtroom while the other witnesses are testifying in regard to it. Now, the method that I have outlined, which I thought was understood by Mr. Faulkner, very clearly will

present to the Jury the evidence in a way of clarity which otherwise would be impossible.

Mr. Faulkner: Yes, and highly to the disadvantage of the defendant.

Mr. Pratt: Not in the least, not in the least. It could not prejudice the defendant.

The Court: I have made an inquiry: What is before the Court at the present time?

Mr. Pratt: The matter of the exclusion of the witnesses.

The Court: What witnesses?

Mr. Pratt: Colonel Hand.

The Court: He may retire until called. Now, in an emergency or in case of necessity I will take a recess so that you will have a full opportunity to present your case.

Mr. Pratt: I do not understand your Honor.

The Court: I can understand the necessity of being advised and guided by some of these expert witnesses. Just a moment. The Court is addressing counsel. That has occurred a number of times. It is well to keep it in mind. I can understand the [297] necessity of advising with experts. I shall give you a full opportunity to it, if called to the Court's attention in relation to a number of these witnesses.

Mr. Pratt: Thank you, your Honor.

The Court: Call the next witness.

HENRY LESTER PINEDA

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. My name is Henry Pineda.

The Court: Q. What is your full name?

A. Henry Pineda.

Q. Where do you live?

A. I live at 332 Chestnut Street, San Francisco.

Mr. Zirpoli: Your Honor, we can't hear very well at this table.

The Witness: I live at 332 Chestnut Street, San Francisco.

The Court: Sit back in your chair here. Now you can raise your voice so we can all hear you.

Q. What is your business or occupation?

A. I am a longshoreman.

Q. ~~Employed where?~~

A. Well, by the Waterfront Association.

The Court: Proceed, gentlemen.

Direct Examination

Mr. Hippeli: Q. What did you do before you became a longshoreman, Mr. Pineda?

A. Well, before I became a longshoreman [298] I was a warehouseman for two years, and before that I worked for Nye & Nissen for about nine years.

Q. About what time were you first employed by Nye & Nissen?

A. Oh, about 1934.

Q. And when did you leave them?

A. In October 1942.

(Testimony of Henry Lester Pineda.)

Q. Did you return to their employ thereafter?

A. I returned around February until March in 1943, about five weeks.

Q. While you were employed at Nye & Nissen, will you explain what you did there, please?

A. Well, when I first went to work there I helped Tom Andre in the breaking room. We got eggs and broke them up, or separated the yolks from the whites, put them in cans and stored them. And then later on I started helping Ed Menges in the candling room, helping him outside nail cases, and helping Jim Nix in the butter room. It all depended on the season. If it was the butter season I would be helping Jimmie Nix. When it was the candling season I would be helping Ed Menges.

Q. Did you also work on the floor of the plant?

A. Yes, I worked on the floor storing things away, putting the eggs wherever Ruby told me to put them, Ruby Goddard.

Q. Did you ever make any deliveries?

A. Yes, quite a few times. I would help Harry Smiley and Tom and later Charlie Eby make deliveries.

Q. And the latter duties that you described—those are the duties of the truck driver, are they not? A. Yes. [299]

Q. During the period of your employment at the defendant Nye & Nissen's plant, will you explain generally what the defendant Moncharsh did in the plant?

(Testimony of Henry Lester Pineda.)

A. Well, he had charge of the plant. He would come down and give Ruby orders.

Mr. Faulkner: Your Honor, we would object to that as too general.

The Court: Let the question and answer stand. Proceed.

The Witness: He would have charge of the plant.

The Court: Q. Who would have charge of the plant?

A. Abe Moncharsh.

Q. What do you mean by that, had charge of the plant?

A. Well, if anything went wrong or anything had to be done, he was the man to give the final word.

The Court: I see. Proceed.

The Witness: He would come down and tell us what to do, or tell Ruby what to do. Sometimes Ruby wasn't around. If we was doing something wrong, he would correct us.

Mr. Hippeli: Q. Would he have general supervision of all the operations of the plant?

A. He would.

Q. During the period of your employment at the defendant's plant will you tell us what Henry Berman did? A. Well, that was——

Mr. Faulkner: Excuse me, your Honor. The same objection unless it is confined to the period of the indictment, which is not very difficult for counsel to do. It is a long period, six [300] years.

The Court: Fix the time as near as you can.

Mr. Hippeli: The time I was inquiring about was from 1934 to October of 1942. The indictment covers from 1938 to 1945.

Mr. Faulkner: From 1938 until he left.

The Witness: Well, from 1938 until I left——

Mr. Hippeli: I think his duties are material prior to 1938 also. I would like to have the witness——

The Court: There is nothing before the Court. Proceed.

Mr. Hippeli: Will you answer the question?

Mr. Faulkner: May I have that question read?

Mr. Hippeli: The question that I placed before the witness——

Mr. Faulkner: I asked the Court to have the question read.

The Court: Read the question, Mr. Reporter.

(The reporter reading:)

"Q. During the period of your employment at the defendant's plant will you tell us what Henry Berman did?"

Mr. Faulkner: We object to that unless it is confined to the period of his employment and the period covered by the indictment, if the Court please.

The Court: Q. When did you first go to work?

A. 1934, about 1934.

The Court: Fix the time as near as you can.

Mr. Hippeli: Q. Was Henry Berman employed at the Nye & Nissen plant during all of the time in which you were employed [301] there?

(Testimony of Henry Lester Pineda.)

A. Yes, he was. He——

Mr. Faulkner: We object to the witness volunteering.

Mr. Hippeli: Q. During that time will you describe generally the duties of Henry Berman?

Mr. Faulkner: Your Honor, I made my position clear. I ask that he confine his testimony, as the law requires, as to the activities of the defendants from 1938 to 1943 when the man left.

The Court: Read the question, Mr. Reporter.

Mr. Faulkner: That is a period of five years.

(The last question was read by the reporter.)

The Court: You may answer.

Mr. Faulkner: Exception.

The Witness: Well, he had charge of what they call city sales. They had about four drivers that sold around the city to different stores and restaurants, I believe, and he had charge of them, handing in their orders, and then when we were kind of busy he would give us a hand, helping us nailing cases or doing whatever we were doing helping in that butter room.

Mr. Hippeli: Q. His duties would be generally in connection with butter?

A. He would help pushing butter or strapping the butter.

Q. He would supervise the loading of deliveries of butter? A. No.

Q. What were his duties with respect to eggs? [302]

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: We object to that type of examination.

The Court: He may answer. The objection is overruled.

Mr. Faulkner: Exception.

A. Well, he did the same as the butter. He wouldn't have anything to do except as I say, if we were busy on the bench he would come up and give us a hand. Say we worked overtime or we were kind of busy, short of men, couldn't get men, he would give us a hand nailing them up and putting them the way we were told to put them.

Mr. Hippeli: Q. What did he do with respect to cheese?

A. I don't know. Just when a driver called in for an order, he would know how much cheese to give the driver.

Q. Would he supervise the delivery of the order?

A. No, these orders would be for city sales. We put them on board or flats. Each driver would call for the order, sitting on a flat or two flats, depending on the size of the order, and then he would tell the driver what to do, and that I wouldn't know.

Q. During the period of your employment at Nye & Nissen, what were the duties of the defendant Ruby Goddard?

Mr. Faulkner: We object to the form of the question. We have no objection to his describing what Mr. Goddard did, but what his duties were the witness is not in a position to testify.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: I will reframe the question, your Honor.

Q. During the period of your employment at the defendant Nye & Nissen Company's plant, what did Ruby Goddard do?

A. He was [303] more or less like shipping clerk and general foreman of the main warehouse gang. He would get his orders from up at the office and then he would come down and give them to us.

Q. Did he supervise the receipt and delivery of eggs? A. Yes, he would.

Q. Butter? A. Butter, cheese.

Q. During the period of your employment at the plant what did the defendant Edward Menges do?

A. He had charge of the candling room, giving the girls orders after he had received them from Abe Moncharsh or Ruby Goddard. He would tell them what to do and tell them how many cases more they would have to go, and keep track of all the girls' time.

The Court: Let the Jury take a recess for a few minutes.

(Recess.)

The Court: Proceed.

Mr. Hippeli: Q. Mr. Pineda, before the recess you were describing what Mr. Menges did at the defendant's plant. Had you completed your answer on that?

A. As I said, he was in charge of the candling room; told the girls what to do; received the orders from Goddard or from Ed. Menges. Then when

(Testimony of Henry Lester Pineda.)

I was busy he helped me in the breaking room, and if we were busy in the butter room he would shift over there and he would help on the deliveries, the trucks, too.

Q. Would you have charge of the butter room when he wasn't there?

A. He didn't have charge of the butter room.

Q. You had charge of one of the rooms?

A. I had the breaking room.

Q. Who had charge of the butter room?

A. Jimmie Nix.

Q. Who had charge of the candling room?

A. Ed Menges.

Q. Would the three of you sometimes interchange your duties? A. Yes.

Q. During the period you were employed at the defendant Nye & Nissen's, will you describe what co-conspirator James Nix did at the plant?

Mr. Faulkner: We object to that designation and assign it as misconduct.

The Court: Reframe the question.

Mr. Faulkner: May I ask the court to instruct the jury to disregard the form of the question propounded by Mr. Hippeli? [305]

The Court: Let the jury disregard it.

Mr. Hippeli: Q. During the period of your employment at the plant of Nye & Nissen, will you describe what James Nix did at the plant?

A. James Nix had charge of the butter room and he would get his orders from Ruby, how much butter to cut, what kind of cases, what kind of

(Testimony of Henry Lester Pineda.)

boxes to put it in, what butter to use for the order. Then he would help me in the breaking room and he shifted around and helped Ed on the bench.

Q. Who is Ed? A. Menges.

Q. Please use the last names.

A. Then he helped on the waterfront. On the waterfront he would help the inspectors and he would switch whichever eggs the inspectors wanted to inspect in to them.

Q. Was he a truck driver, also? A. No.

Q. Would he accompany the truck driver?

A. Yes; once in a while he would drive a small truck down there.

Q. When you referred to Ruby in your prior testimony, to whom did you refer?

A. Ruby Goddard.

Q. Where was the Nye & Nissen plant when you first went to work for them in 1934?

A. 324 Townsend, between Fourth and Fifth.

Q. That was near the Southern Pacific Depot?

A. A block away.

Q. How long was it there?

A. It was there until about the summer of 1942.

Q. At that time where did it move?

A. Moved to Seventeenth and Missouri, I believe.

Q. Is it there at the present time, do you know?

A. That I can't tell, I don't know.

Q. Mr. Pineda, would you please step to the blackboard and draw a diagram of the floor plan of the defendant's plant at Townsend Street?

Mr. Faulkner: We will object to that as in-

(Testimony of Henry Lester Pineda.)

competent, irrelevant and immaterial and object to a trial by demonstration of that type.

Mr. Hippeli: At this time I desire to have the witness briefly outline the position of the various rooms on the floor so a reference may be had to the several rooms during the subsequent testimony that will be elicited from the witness.

The Court: He may go to the blackboard.

Mr. Hippeli: I suggest you start from Townsend Street and place the plant as it is situated on Townsend. What are those last two marks?

A. That is Fourth Street, and that is Fifth. This is Townsend, and we would be about three houses from Fourth Street. This would be the entrance.

Q. Might I suggest you draw the four walls of the plant on there, please? Indicate how wide that would be.

A. I am not sure but from 75 to 100 feet.

Q. All right.

Mr. Faulkner: Without that wall there it won't be a very [307] good building.

Mr. Hippeli: Will you draw it in?

The Witness: This will be Bluxome Street.

Q. Is there a railroad track?

A. A railroad track, all you have to do is put a plate, steel plate in to connect to that, about 3 feet. This would be the candling room.

Q. May I ask you about how deep is the plant?

A. It would be about half a block deep.

(Testimony of Henry Lester Pineda.)

Q. Will you indicate where the candling room would be?

A. The candling room would be about here.

Q. What are those circles?

A. These are lights, ten lights for ten girls.

Q. Those are candles? A. Yes, here.

Q. Will you indicate the general character of the wall containing the candles?

A. This wall comes from up above, about so high, about four feet from the ground.

Q. About eye level?

A. About eye level. Well, about four feet. I am not so tall. I am a little short. Then the partition would be here and a place here about the size of a case of eggs. We would have a curtain the whole length of this candling room, the curtain coming down to that light, that bench.

Q. Was that curtain——

A. The curtain would be stripped, it was just the width of a case, we would shove a case in so they wouldn't have to move the whole curtain——

Q. That would keep the room dark?

A. Yes. This bench that the girls are working on——

Q. Where is the bench with reference to the curtain?

A. It was right underneath the curtain.

Q. How wide would the bench be?

A. The bench would be about six feet wide, I think.

Q. A little wider than the counsel table?

(Testimony of Henry Lester Pineda.)

A. Yes. It would hold two cases of eggs lengthwise.

Q. Would the bench run the length of the wall?

A. Yes, the whole length of the wall.

Q. What would extend from the top of the bench down?

A. The top of the bench would be there, and then another partition, so there would be no draft.

Q. Another partition below the bench running to the floor?

A. Yes. The door of the candling room would be right here.

Mr. Faulkner: May I make a suggestion? Why not have Mr. Pineda draw a typical booth on the side, there, a typical candling booth?

Mr. Hippeli: I will ask him to do that after he has described the room.

Q. Would you label that "candling room," please? Were the ten candles enclosed in a booth?

A. No. It is all one room.

Q. Were there partitions between the candles?

A. No. Later on in the new plant they had partitions but here in the old plant there was one room. [309]

Q. What would be in the lower right-hand corner of the plant?

A. They had the breaking room, it come up about to here.

Q. Where is your lower wall on the breaking room? A. This wall.

Q. Did this wall extend down? A. Yes.

(Testimony of Henry Lester Pineda.)

Q. Would that wall then proceed over here?

A. Yes.

The Court: May I suggest this board be brought forward so the jurors may be able to see it?

Mr. Hippeli: Q. Did this wall of the breaking room extend over to this wall? A. Yes.

Q. Would you draw that on there, please?

A. All the way down to here.

Q. Were there any other doors in the candling room other than the door indicated?

A. They had over here stairs to go up to the second floor.

Q. Well, was there a door down at the end?

A. No.

Q. Was there any other room situated above the breaking room?

A. Up above they had rented it out and on the top of the room——

Q. They didn't use that?

A. No, except to store something.

Q. What other room appeared on the floor of that plant?

A. The butter room. The butter room came up about here. It was connected like this.

Q. What have you just indicated?

A. The two doors. This is where we bring the butter in before it was cut and where [310] it came to after it was cut.

Q. What else?

A. Light from here, and about here would be the freezers, the coolers. They had about three of them.

(Testimony of Henry Lester Pineda.)

Q. Would the well of those freezers extend to the wall of the building? A. Yes.

Q. Well, extend it. Where would the entrance to the freezers be?

A. One here, and one here.

Q. Directing your attention to——

A. And this would be Mr. Goddard's office, over here.

Q. On the right? A. One the right.

Q. On the right corner of the plant?

A. The right corner. They had a rest room over here. Then up above they had the whole—here would be the main office, Mr. Moncharsh and Mr. Smith's office.

Q. The main office on the second floor extended across the front?

A. Yes. This would be the main warehouse.

Q. How wide is the south entrance off Townsend Street?

A. I would say about the width of four ordinary small delivery trucks and one big truck.

Q. Could a truck and trailer drive into the main door?

A. Yes. Well, they drive a trailer in and then the truck in.

Q. Was that done on occasion?

A. Always done.

Q. Your eggs or butter or cheese, or whatever it was, would be received on the main floor?

A. Yes.

Q. Was there any entrance on Bluxome Street?

(Testimony of Henry Lester Pineda.)

A. Bluxome [311] Street, the whole width here had a sliding door that opened over the width of this aisle, here.

Q. Would deliveries be made through that?

A. Yes.

Q. You say there was a railroad track out on Bluxome Street? A. Yes.

Q. You could deliver from the freight cars into the plant? A. Yes.

Q. Would you resume the stand?

The Court: I think it would be well to have the witness take the pointer and familiarize the jury, there were many of them who could not see when the blackboard was back there.

The Witness: Over here is where the girls candle the eggs. The eggs come in here. This room is all dark, here, with the exception of the ten lights, or three lights, depending on the number of girls working. Right here, this is the breaking room for eggs, like if a baker wants thirty-pound cans of yolks or a thirty-pound can of whites, the yolk is separated from the white in this room and then they were stored up for the winter time, when eggs were hard to get. This would be the butter room, where the butter would come in on the main floor, here, and go into the cooler, here. We brought it up here through this door, here, to the butter machine, to cut it, and then it will come down the rollers, here, out in this room, here, and go back here. This would be the freezers. These two freezers—we would store butter [312] and cheese,

(Testimony of Henry Lester Pineda.)

because—well, butter, like sweet butter, would be kind of delicate to stay here, so it was stored here. Because it had to be well frozen, and maybe frozen meat at times. This would be the main warehouse where the eggs were which had to be placed according to grade, A, B, or C. They were placed here before they were brought to the candling room. This would be Ruby Goddard's office, or the shipping clerk's office. Say that was the main office there where they could overlook Townsend Street.

Mr. Hippeli: Q. You somewhat anticipated my proposed line of questioning, your Honor. I was going to direct the witness' attention to the eggs and ask you if you would explain how eggs are received at the plant during the period of your employment there.

A. The majority of our eggs came from Petaluma. We had a truck driver named Harry Smiley, who would bring most of them in. Sometimes he would make two trips a day, one early in the morning, maybe seven or eight, and then come back again. They would come in through the Townsend Street entrance. We had a place there where the trailer could be backed up, the trailer was kind of high, and this was a little steep grade there, and they make it level with the floor so he would drive to the back door and take the eggs out according to grade at the main entrance.

Q. Where would they be stacked there?

A. They would be stacked 30 cases to a flat.

(Testimony of Henry Lester Pineda.)

Then we would truck them away and stack them up in a tier according to grade. [313]

Q. Would the grade appear on the eggs before they were received?

A. That all depends on the type of egg that was received. Sometimes they came up all ready to be inspected.

Q. What do you mean by that?

A. Well, the eggs would be already put up, say they were grade AA mediums.

Q. Would the case of eggs have a grade label on them? A. Some, yes.

Q. What grade label?

A. It was a large egg, Blue Biddy label.

Q. That label was a Nye & Nissen label?

A. Yes.

Q. Were there any other labels other than the blue——

A. Well, they used green for the mediums, black for the pullets or peewee eggs. Then they used Hen-Made for Grade B eggs.

Q. You say the particular delivery of eggs would be stacked on the main warehouse floor by the grade which appeared upon those labels? A. Yes.

Q. Under whose supervision would deliveries of eggs be unloaded?

A. Well, the majority of times it would be Mr. Goddard; once in a while it would be Mr. Abe Moncharsh.

Q. After the deliveries of eggs were stacked on the main warehouse what is then done?

(Testimony of Henry Lester Pineda.)

A. The order would come in——

Q. What order?

A. Take an order for certain amounts of eggs, cases of eggs, it would come from Mr. Moncharsh to Ruby.

Q. Ruby who?

A. Goddard. He would come down and give it to Ed Menges, or maybe I would be helping Ed Menges on the bench [314] and he would give it to Ed, and he would go in and tell the girls what the order was.

Q. Do you recall a particular occasion when such orders were given? A. Yes.

Q. Will you take one occasion and describe it for us? [314-a]

Q. Do you recall the question, Mr. Pineda?

A. Yes.

Q. Will you answer it, please?

A. I would be working with Ed Menges on the bench——

Q. Will you fix the time?

A. Let's see. One of the times would be, or, about 1937, in the summer.

Q. In the summer of 1937? A. 1937.

Q. And who would be present on the floor?

A. Ed Menges and I would be on the bench and——

Mr. Faulkner: Just a moment. We object to any transactions in 1937. 1938 is a long time to go back, but 1937 is too far.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Q. Will you pick one about 1942, before you left?

A. 1942? I will pick one in 1941.

Q. All right.

A. I was helping on the bench——

Mr. Faulkner: We ask that the occasion be picked first.

Mr. Hippeli: Q. Will you select a particular time when an order was given in your presence on the floor for the disposition of a lot of eggs which had been received, and will you tell us that particular time, please?

A. Well, in 1942, about in the summer of 1942—

Q. Who was present?

A. Ed Menges, Ruby Goddard, and Mr. Moncharsh.

Q. What occurred at that time?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial, hearsay, and not binding upon the [315] defendants, and not admissible under the substantive counts of the indictment.

The Court: The objection will be overruled. You may answer.

Mr. Faulkner: Exception.

A. I was helping Ed Menges on the bench, when he was taken away to a corner—by the bench I mean the candling room, there—and he and Mr. Moncharsh and Rubby Goddard got in a conference there. I was called out of my room to take over the bench.

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: May I interrupt, your Honor? In other words, there is a substantive count in this indictment against Mr. Menges, Mr. Moncharsh, Mr. Goddard and Mr. Berman. This transaction is between three of those men in 1942, and it is being admitted as evidence against all of them for a transaction in 1944, and I submit that that would not be——

The Court: What count of the indictment did you have in mind with respect to this testimony, Counsel?

Mr. Hippeli: This testimony refers to the conspiracy count, and it is also material for the substantive counts, which embody specific deliveries occurring in 1944. I believe that it is material to the substantive counts because it is illustrative. It is the direct evidence on the particular manner in which a particular delivery of the eggs was handled from this witness. I intend to elicit from this witness and other witnesses the manner in which eggs, an order of eggs is prepared on the floor and the manner in which orders of eggs [316] are delivered, and I think it is material to show the scheme of the business, the manner in which they operate the business, the knowledge of the particular defendants, and that all is material to a specific delivery that will occur in 1944.

Mr. Faulkner: The operations in 1944 were with different people, they were in a different plant; the physical arrangement of the building was different. Everything was different in 1944.

The Court: This testimony will be limited to

(Testimony of Henry Lester Pineda.)

those who were present and took part in any transaction that occurred at that time and place, but I will allow it, and the objection will be overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Do you recall the question, Mr. Pineda?

A. Yes. Well, as I said before, I was working in my breaking room, there, when I was called out on the bench to take over Ed Menges—Ed Menges' job on his bench, and Mr. Goddard, Mr. Monchársh and Ed Menges got into a little conference there what to do with this order that was coming in.

Q. Will you tell us what they said?

A. Well, at this time they wanted these cases—this order to go into cases—well, they weren't—they were stenciled cases, no labels on them.

Mr. Faulkner: I make the additional objection that unless these orders have some relation to a Government delivery they [317] are incompetent, irrelevant and immaterial.

The Court: They may or may not. I do not know.

Mr. Faulkner: I object. There is no foundation laid. They were selling literally millions of eggs during this period.

The Court: This testimony is going to the defendants in question, and it binds the parties that were present there at that time, and any conversation had between the parties at that time and place goes to the jury.

Mr. Faulkner: Your Honor, suppose the order

(Testimony of Henry Lester Pineda.)

was for the Safeway Stores? If they do not lay a foundation that it was for a Government shipment, I respectfully submit it could not be admissible.

The Court: Unless it is followed up the testimony, of necessity, will have to go out.

Mr. Hippeli: Q. Do you recall the character of the order they were discussing?

A. Yes, it was a Government order.

Q. Proceed. Tell us what occurred.

Mr. Faulkner: May I have the answer?

The Court: Read it.

(The answer was read by the reporter.)

Mr. Hippeli: Q. Do you recall to which agency of the Government the order calls for a delivery?

A. What do you mean by——

Q. Was it an order placed by the Army, by the Navy, or by some other Government agency?

A. Well, by the Army, because like— [318] I never heard them say about Army, but Army inspectors came and inspected the order. That is how I knew it was an Army order.

Q. I am afraid we have interrupted you. Will you start in from the beginning of the conversation and tell us what that conversation was?

The Court: Now, wait a minute. It is well for you to know that you are expected, in so far as you can, to tell the conversations had between the parties present, and who they were and what they said, as near as you can remember.

The Witness: Well, I remember this one, like they had a certain amount of girls working on the

(Testimony of Henry Lester Pineda.)

bench—I think it was about five girls—they didn't have the full crew, and they were just getting ready—they weren't working on this order that was coming in——

Mr. Faulkner: We ask that all this go out.

The Court: It is preliminary to what he is going to testify to. The objection will be overruled. You may proceed.

Mr. Faulkner: All right.

The Witness: So I helped on this bench, and Mr. Goddard and Mr. Moncharsh and Mr. Menges got into this corner, and naturally when I nailed these different cases I would have to go up and down the bench, and I would be close to where they were. On this order there was supposed to be a certain amount of samples to be made, and out of those samples the cut-outs were all supposd to go in this other case, the same type of case that those samples were. The only thing that was supposed to be taken out were the black rots and the leakers. Leakers had a hole in them and the egg meat—what they call the egg meat was coming out. These were the only eggs that were to be taken out of this order.

Mr. Hippeli: Q. Who said that?

A. Mr. Moncharsh to Mr. Goddard, and Ed was supposed to go in and tell the girls the same order.

Q. Who told him to tell the girls that?

A. Mr. Moncharsh.

Q. With respect to the candling room, where did this conversation occur?

(Testimony of Henry Lester Pineda.)

A. Right at the corner where "Door" is written on it.

Q. By the door of the candling room?

A. Right at the corner.

Q. To the right of the door as it appears on the blackboard? A. Yes.

Q. With respect to the door of the candling room, where was the lot of eggs referred to?

A. The lot of eggs would be where I got "Freezer" marked on the opposite corner, there.

Q. What number freezer? 1, 2 or 3?

A. No. 1. It would be way up on the other side.

Q. Who indicated that that particular lot was to fill that particular order?

A. Mr. Moncharsh.

Q. How did he indicate that?

A. Well, he said those eggs [20] were being put on the floor at that time.

Q. What did he say?

A. He said, "These eggs that are being brought in are supposed to be used for this order coming up."

Q. To whom did he tell that?

A. He told that—Ruby Goddard was there, Ed Menges—I wouldn't know to whom he was talking to, but either one of them.

Q. That was in your presence? A. Yes.

Q. As I recall your testimony, you referred to the word, "Cut-out." What do you mean by the word "Cut-out"?

A. Cut-out is everything left from a case out-

(Testimony of Henry Lester Pineda.)

side of the—say they have taken out Grade A mediums. The whole case can't be a Grade A medium when they inspect it. Some of it has to be a lesser grade than a Grade A medium. Those are what they call cut-outs.

Q. What was the grade called for in this particular order, if you recall?

Mr. Faulkner: We object to that on the ground the order speaks for itself.

The Court: If he knows he may answer.

The Witness: I believe the case was a Grade A large.

Mr. Hippeli: The order called for a Grade A large?

A. Yes.

Mr. Faulkner: Your Honor, how could we be bound by a belief of what an order called for? In other words, they were selling these very finest eggs to the Army and they were [321] selling the poorest eggs that could be sold to the Army. Are we to be bound by his belief of what that order contained?

The Court: Read the question and answer.

(The last question and answer were read.)

The Court: The question and answer may stand. Proceed.

Mr. Faulkner: I also object to the answer unless the witness has testified that he has seen the order. He could not possibly know it without a foundation that he has seen the purchase order.

Mr. Hippeli: Q. How did you know that the order called for a Grade A large?

(Testimony of Henry Lester Pineda.)

A. Because when an order was put up the case came on the right-hand of the girl. To the left-hand side of the fellow who was on the bench would be the order that was to be put up.

Q. Did you see the order?

A. Well, it is a Grade A. The orders were taken about a week or so or maybe more to put up, and during that time maybe inside the candling room talking to the girls I would hear from them—, I would ask them, "What are you putting up?" And they would always tell me.

Mr. Faulkner: We will object to that as hearsay as to the defendants, your Honor. That is not the way to determine——

The Court: The conversation had with the girls may go out.

Mr. Faulkner: In the light of his subsequent testimony [322] I move that his answer be stricken out. The witness has shown he has no knowledge on the subject of what the purchase order from the Army read.

The Court: The record may stand. Proceed.

Mr. Faulkner: Exception.

Mr. Hippelli: Q. Directing your attention to the particular spot in the plant at which Mr. Moncharsh indicated the lot that was to be graded, do you recall any conversation with Mr. Moncharsh in which he indicated the grade of the particular purchase order that was to be made up?

A. Well, like I heard him say, "The grade will be Grade A to meet the Army regulations." By

(Testimony of Henry Lester Pineda.)

that I guess the Army regulations had different——

Mr. Faulkner: Your Honor, I object to that testimony with respect to the Army regulations. Most of the orders at that time were standard eggs, the poorest egg that you could buy.

Mr. Hippeli: He is stating a conversation, your Honor.

Mr. Faulkner: I know, but he said Grade A which the Army required.

The Court: Read the question and answer.

(Question and answer read.)

The Court: "By that I guess" may go out. The remainder of the answer may stand. Proceed.

Mr. Hippeli: Q. After Mr. Moncharsh indicated the particular [323] lot to be graded, what was done with that particular lot?

A. That lot was taken up to the outside space there between the candling room, the blood room and the breaking room.

Q. Who took it there?

A. I would, Ed would, or Ruby Goddard. It all depends how much time we had.

Q. Who did it this particular time?

A. Well, this time is was Nix, Jimmie Nix, I, and Ruby Goddard.

Q. Was Mr. Moncharsh present?

A. Well, during the week or two——

Q. I mean this particular time, he indicated what the lot was?

A. Well, we just didn't go right to work on it.

(Testimony of Henry Lester Pineda.)

We finished that day or two and then got ready for this order.

Q. Was he present when this matter that you just mentioned, to have the lot you referred to placed on the warehouse floor and the candling room?

A. Oh, yes, because he always came down at ten, eleven thirty every day. He came down to make sure we were doing the right thing.

Q. How many cases in that lot were candled?

A. Every case.

Q. Where were those cases brought with respect to the candling room?

A. They would be brought in the aisle there, between the butter room and the breaking room, and the candling room, there.

Q. Who would have charge or control of the cases which were stacked along the wall of the candling room, concerning the candling lights?

A. Ed Menges. [324]

Q. Who worked with Mr. Genges on that occasion? A. I did.

Q. Who would be inside the candling room?

A. Well, they would have ten girls——

Mr. Faulkner: I object to all this testimony, your Honor, as incompetent, irrelevant, and immaterial. There is no requirement under any rule, regulation, law or order requiring a shipper of eggs to candle them or grade them.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

(Testimony of Henry Lester Pineda.) :

Mr. Hippeli: Q. Who was inside the candling room?

A. Well, they would have eight girls and ten girls. It would all depend on how many girls they could get at the time.

Q. After the cases were along the outside wall of the candling room what was done to them?

A. Well, then we put them in front of the lights of the girls——

Q. You would take the top off, wouldn't you?

A. We would take the top off.

Mr. Faulkner: That is all hearsay as to the defendants, your Honor. This conversation occurred one day and then in the next two weeks something was done to those two cases. No one was present, no defendant present. We object to it all as hearsay.

Mr. Pratt: All done under the direction of the defendants, as it clearly appears.

Mr. Faulkner: That is in the evidence. The defendants [325] directed that they be graded.

The Court: Read the question, Mr. Reporter.

(The last question was read.)

The Witness: Yes, we would.

The Court: Let the question and answer stand. The objection is overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. You and who would take the tops off?

A. Ed Menges and I.

Q. Would Mr. Goddard assist you in that?

A. Oh, very seldom.

(Testimony of Henry Lester Pineda.)

Q. On this particular occasion? A. No.

Q. After the tops were taken off the cases what was done with the cases?

Mr. Faulkner: The same objection, your Honor.

The Court: Same ruling. Objection is overruled.

Mr. Faulkner: Exception.

The Witness: We would put the case in front of the light of the girl. The girl's light would be indicated by two white marks on the outside with a little "X" in the middle.

Mr. Hippeli: Q. Will you step down here, please, and indicate how those white marks would be indicated with respect to the candle?

The Court: Step aside and use the pointer so the jurors may be able to see it.

Mr. Hippeli: I am asking that he insert the white marks. [326]

The Witness: In front of each light, outside, there would be a little white mark here with an "X", which would show where the light is situated. So the girl, when we put a case there, she would pull this case in. The bench runs from the outside of the candling room to the inside. And when she pulled the case in she would shove another one out. We wouldn't place another case alongside of this light where she might shove a case out and knock the case on the floor. That is why we had this mark. That is the only place we could place a case of eggs without them falling on the floor when she shoved anything out. So when we got ready to put up an

(Testimony of Henry Lester Pineda.)

order, the flats would be outside, here. It all depends. In this case I had half of the lights and Mr. Menges had the other half of the lights. I put my full cases here and I worked these four lights, here, and he worked the other four lights.

Mr. Hippeli: Q. Were there similar white marks across each candle? A. Yes.

Q. Then you indicated a case of eggs would be taken from the tray—— A. The flat.

Q. Are they also called trays? A. Trays.

Q. Also called skids? A. Skids.

Q. From the trays, the flats or the skids, the tops would be taken off and either you or Mr. Menges, as you were working the order, would push a particular case into the candler through the vent?

A. Yes, we would place it there and she [327] would pull it in. We would never push in—she may have a case there. We wouldn't be able to see. You just leave it there. When she is ready she reaches out for it.

Q. Could you see through those curtains?

A. We would lift it up when we wanted to talk to her. We lift the curtains aside.

Q. Are you familiar with whether or not anything else would be on the bench inside the candling room when a particular case was pushed through to the X mark?

A. Well, yes, there would be a case on this side, on her left-hand side, and then a case on the right-hand side.

Q. Of the case to be inspected?

(Testimony of Henry Lester Pineda.)

A. Of the case to be inspected, and this case would be a brand new case on each side, and she placed her Grade A's into this right-hand side here and her cut-outs, what was left over, on this left-hand side. When she shoved them out we would know by where the eggs came from, according to these two white marks, whether it was a Grade A or a cut-out.

Q. So the Grade A she would push out on one side of the white mark——

A. The right-hand side.

Q. And the cut-out would be pushed out on the other side of the white mark? A. Yes.

Q. Were the cut-outs indicated in any other way other than the side of the candle they were pushed out?

A. Once in a while they would get a strip of cardboard cut up and leave it on the [328] top——.

Mr. Faulkner: Your Honor, I do not like to object all the time, but this does not relate to the issues. "Once in a while they do this"—all proposed to tie into a particular transaction when Mr. Moncharsh had a conversation. The examination is all hearsay as to the defendants. It does not tie into this case.

The Court: He is just outlining generally the methods pursued in this activity. I will allow it.

Mr. Faulkner: On this occasion when the order was given by Mr. Moncharsh.

The Court: Yes.

Mr. Hippeli: Q. Were those particular methods of indicating cut-outs, that is, the side of the light

(Testimony of Henry Lester Pineda.)

on which it was pushed out and the card that was placed on the eggs which were pushed out—were those methods of indicating cut-outs used at the time you are talking about? A. Yes.

Mr. Faulkner: That calls for the opinion and conclusion of the witness.

The Court: Read the question, Mr. Reporter.

(Question read.)

The Court: The objection will be overruled. He may answer.

Mr. Faulkner: Exception.

A. Yes, that is the method they used. [329]

Mr. Hippeli: Q. In the candling process of each particular case was each egg in each case candled?

A. Yes.

The Court: It is twelve o'clock, gentlemen. Mr. Barden has called my attention to the fact that it is necessary, for him, a week from Monday, to go to Nevada. He indicated also there are a number of other jurors who are under a misapprehension that we would not convene on Monday. I want to be helpful to the jury in any way that I can. It may be it is only on account of my anxiety to try to hurry the case along. What is the wish of the jury with respect to Mondays?

(Discussion with the jury.)

The Court: We will not convene on Monday. You may be excused.

(A recess was taken until two o'clock p.m.)

Afternoon Session, January 18, 1945, 2 p.m.

HENRY LESTER PINEDA,

recalled.

Direct Examination (Resumed)

The Court: Waive roll call, stipulating and agreeing all the jurors are present?

Mr. Hippeli: Yes.

Q. I believe at the noon recess, Mr. Pineda, we had traced the course of eggs into the candling room and we had three cases of eggs on the bench before the candler. Do you recall that?

A. Yes.

Q. Will you state again just what those three cases were? What was the middle case?

A. The middle case was a case—the middle case was a case that the truck driver had delivered.

Q. What would the case to the right of that be?

A. The case to the right of that would be an empty case where the order would be placed in.

Q. The case to the left?

A. Would be the cut-out case.

Q. What would be done to the case to the right after the candler had completed that case?

A. She would push it out.

Q. What case would she put in——

Mr. Faulkner: We submit the witness cannot testify what a candler put in the case. No foundation has been laid.

Mr. Hippeli: Q. Do you know what eggs the candler placed in that case to her right hand? [331]

Mr. Faulkner: We object as calling for an opin-

(Testimony of Henry Lester Pineda.)

ion and conclusion of the witness. No foundation laid in this, that the record so far shows he could not know unless he was in the candling room.

The Court: Objection overruled.

Mr. Faulkner: Exception.

The Witness: I wouldn't know, because we had ten-minute recesses about ten o'clock every day and about two-thirty in the afternoon. I would always go into the candling room and talk to the girls and kid about something——

Mr. Faulkner: If it is a conversation between a candler and the witness it is hearsay.

The Court: It is no conversation.

Mr. Hippeli: Q. What grade of eggs was in the case on her right hand?

Mr. Faulkner: I object to that as calling for a conclusion and opinion of the witness, and no foundation has been laid.

The Court: For the purpose of the record, indicate the purpose of this testimony.

Mr. Hippeli: The purpose of the testimony is to follow the course of the eggs that graded A that were in the case on the right-hand side of the candler, and also to follow the course of the case with rejected eggs on the left-hand side of the candler and trace that delivery back into the main lot on the floor, and to ask the witness whether or not those eggs [332] were inspected, and, if so, were marked.

The Court: If it has to do with a certain delivery lay the foundation.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: This is the specific delivery we were talking about this morning.

The Court: What do you mean by "specific delivery"?

Mr. Hippeli: The delivery that we had traced at a specific time——

The Court: What time?

Mr. Hippeli: Q. Do you recall the time of that, Mr. Pineda?

A. Do you mean the year?

Q. No, the date of the delivery that we were talking about this morning.

A. It was in about 1941.

Mr. Faulkner: If the Court please, this morning it occurred in 1942; now it is 1941. How can we defend against a situation like that?

Mr. Hippeli: May I have the reporter refer——

The Court: The date was 1942 this morning. I have a distinct recollection of it. If there is any doubt about it you can check with the reporter.

Mr. Faulkner: We did.

Mr. Pratt: May it please the court, this witness was an employee of the company at the time. Whatever he did and whatever he observed at that date was done in accordance with instructions from the defendants, or some of them, and I [333] contend that we are entitled to show a course of procedure which emanated from the defendants, whether it related to a specific instances or whether it related to a course of procedure during the period of time that he was there, these instructions all came from the defendants, themselves.

(Testimony of Henry Lester Pineda.)

The Court: The record does not show it.

Mr. Pratt: Well, it shows that what he was doing was under the control and under the direction of the defendants that he mentioned, namely, the particular defendant.

The Court: That will be a question for the jury after the evidence goes in. The foundation has not been laid for the outline that you suggest in relation to this testimony. I think I indicated when we adjourned last night that a course of conduct, the general course of conduct and the way they carried on their business was outlined, but when it comes to connecting up any defendant the proper foundation must be laid.

Mr. Pratt: Of course, what we were discussing yesterday, related to a Government official and the course of conduct and procedure which he followed. Now, we have got to a place in this defendant corporation where we have this employee who has outlined the fact that whatever he did he did do under instructions from these defendants, and it seems to me that in a preliminary course of questions——

The Court: I will allow wide latitude in relation to any preliminary question up to the point where any defendant [334] is to be connected up with any transaction. If there is any question about that the proper foundation must be laid.

Mr. Pratt: I thought it had been laid.

The Court: Well, go back now and let us read the question, so there is no question about it.

(Record read by the reporter.)